

Notice of Allowability

Application No.

10/518,578

Examiner

Stephen F. Gerrity

Applicant(s)

TAMIS, PAULUS JOZEF

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address--

All claims being allowable, PROSECUTION ON THE MERITS IS (OR REMAINS) CLOSED in this application. If not included herewith (or previously mailed), a Notice of Allowance (PTOL-85) or other appropriate communication will be mailed in due course. **THIS NOTICE OF ALLOWABILITY IS NOT A GRANT OF PATENT RIGHTS.** This application is subject to withdrawal from issue at the initiative of the Office or upon petition by the applicant. See 37 CFR 1.313 and MPEP 1308.

1. ☒ This communication is responsive to the amendment filed 29 August 2006.
2. ☒ The allowed claim(s) is/are 1,2 and 4-18.
3. ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All b) ☐ Some* c) ☐ None of the:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☒ Copies of the certified copies of the priority documents have been received in this national stage application from the International Bureau (PCT Rule 17.2(a)).

* Certified copies not received: _____.

Applicant has THREE MONTHS FROM THE "MAILING DATE" of this communication to file a reply complying with the requirements noted below. Failure to timely comply will result in ABANDONMENT of this application.

THIS THREE-MONTH PERIOD IS NOT EXTENDABLE.

4. ☐ A SUBSTITUTE OATH OR DECLARATION must be submitted. Note the attached EXAMINER'S AMENDMENT or NOTICE OF INFORMAL PATENT APPLICATION (PTO-152) which gives reason(s) why the oath or declaration is deficient.
5. ☒ CORRECTED DRAWINGS (as "replacement sheets") must be submitted.
- (a) ☐ including changes required by the Notice of Draftsperson's Patent Drawing Review (PTO-948) attached
- 1) ☐ hereto or 2) ☐ to Paper No./Mail Date _____.
- (b) ☒ including changes required by the attached Examiner's Amendment / Comment or in the Office action of Paper No./Mail Date _____.
- Identifying indicia such as the application number (see 37 CFR 1.84(c)) should be written on the drawings in the front (not the back) of each sheet. Replacement sheet(s) should be labeled as such in the header according to 37 CFR 1.121(d).
6. ☐ DEPOSIT OF and/or INFORMATION about the deposit of BIOLOGICAL MATERIAL must be submitted. Note the attached Examiner's comment regarding REQUIREMENT FOR THE DEPOSIT OF BIOLOGICAL MATERIAL.

Attachment(s)

- | | |
|--|--|
| 1. <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 5. <input type="checkbox"/> Notice of Informal Patent Application |
| 2. <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 6. <input type="checkbox"/> Interview Summary (PTO-413),
Paper No./Mail Date _____. |
| 3. <input type="checkbox"/> Information Disclosure Statements (PTO/SB/08),
Paper No./Mail Date _____ | 7. <input checked="" type="checkbox"/> Examiner's Amendment/Comment |
| 4. <input type="checkbox"/> Examiner's Comment Regarding Requirement for Deposit
of Biological Material | 8. <input checked="" type="checkbox"/> Examiner's Statement of Reasons for Allowance |
| | 9. <input type="checkbox"/> Other _____. |

EXAMINER'S AMENDMENT

1. An examiner's amendment to the record appears below. Should the changes and/or additions be unacceptable to applicant, an amendment may be filed as provided by 37 CFR 1.312. To ensure consideration of such an amendment, it MUST be submitted no later than the payment of the issue fee.

2. Authorization for this examiner's amendment was given in a telephone interview with Mr. Anthony Venturino (applicant's representative) on 13 November 2006.

The application has been amended as follows:

In the claims:

Rewrite claims 1 and 7 as follows:

1. Method for providing a heat treated filled and closed can, comprising the consecutive steps of:

filling a metal cup of the flexible type with a filling;

closing the metal cup with a lid making a gas tight heat treatable can;

taking measures achieving an under-pressure in the can after closing, wherein the can is sufficiently full to avoid collapse at the under-pressure; and

heat treating the filled and closed can, wherein the filled and closed can permits volumetric altering of the can internal volume to maintain a pressure in the filled and closed can to avoid rupture of the can during heat treating. ~~measures are taken to achieve an under-pressure in the can after closing the cup, wherein the can is of a flexible type;~~

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~~wherein the can has a flexibility of at least about 25 mL/bar, measured as the gradient $\Delta V/\Delta P$ of the flexibility line in the interval between $\Delta V = -10$ mL and $\Delta V = 10$ mL.~~

7. Method for providing a heat treated filled and closed can, comprising the consecutive steps of:

filling a metal cup of the rigid type with a filling;

closing the metal cup with a flexible lid of the easy pull off type adhered to the metal cup making a gas tight heat treatable can;

taking measures achieving an under-pressure in the can after closing, wherein the can is sufficiently full to avoid collapse at the under-pressure; and

heat treating the filled and closed can, wherein the filled and closed can permits volumetric altering of the can internal volume to maintain a pressure in the filled and closed can to avoid rupture of the can during heat treating.

~~wherein measures are taken to achieve an under-pressure in the can after closing the cup, wherein the can is of a rigid type and the can comprises a flexible lid of the easy pull off type adhered to the metal cup.~~

Rewrite claim 4 as follows:

4. Method according to claim 1, wherein the can has a flexibility of ~~more than or equal to~~ at least about 35 mL/bar, measured as the gradient $\Delta V/\Delta P$ of the flexibility line in the interval between $\Delta V = -10$ mL and $\Delta V = 10$ mL.

Add the following new claim 18:

18. Method according to claim 1, wherein the can has a flexibility of at least about 25 mL/bar, measured as the gradient $\Delta V/\Delta P$ of the flexibility line in the interval between $\Delta V = -10$ mL and $\Delta V = 10$ mL.

Examiner's Amendment to the Drawings

3. The following changes to the drawings have been approved by the examiner and agreed upon by applicant. **Figure 2 will be labeled as PRIOR ART.** In order to avoid abandonment of the application, applicant must make these above agreed upon drawing changes.

Explanation for Examiner's Amendment and Reasons for Allowance

4. The following is an examiner's statement of reasons for allowance and an explanation for the examiner's amendment.

Claim 1 has been amended in a manner to include subject matter of the invention which is not taught or suggested by the prior art; in particular, the claim has been amended to include "taking measures achieving an under-pressure in the can after closing, wherein the can is sufficiently full to avoid collapse at the under-pressure; and heat treating the filled and closed can, wherein the filled and closed can permits volumetric altering of the can internal volume to maintain a pressure in the filled and closed can to avoid rupture of the can during heat treating". The present amendment to

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claim 1 distinguishes over the prior art because the prior art does not teach or suggest the subject matter. The closest prior art references to Emberger et al. (US 5,958,487), Kamperman et al. (US 6,213,337) and Heyn et al. (US 5,125,528) do not teach or suggest taking measures achieving an under-pressure in the can after closing (note: from applicant's written description at page 2, lines 1 and 2, "under-pressure" is defined as "the term under-pressure denotes a pressure in the closed can that is lower than the pressure outside the closed can") and that the filled and closed can permits volumetric altering of the can internal volume to maintain a pressure in the filled and closed can to avoid rupture of the can during heat treating. The Kamperman et al. reference, when taken in light of applicant's admission that the subject matter of figure 2 of the instant application is Prior Art, teaches that the filled and closed can is flexible and that as long as the pressure in the autoclave (which provides the heat treating of the filled and closed can) is higher than the pressure in the can nothing can go wrong (i.e. the filled and closed can does not rupture). It would be impermissible hindsight to equate the disclosure in Kamperman et al. with something inherently equivalent with the now claimed subject matter of claim 1. While the prior art may disclose pressure control and arguably flexible cans which may or may not experience volumetric changes the prior art taken as a whole does not teach one of ordinary skill in the art the specific method steps set forth in claim 1.

Claim 7 has also been amended in a manner to include subject matter of the invention which is not taught or suggested by the prior art; in particular, the claim has been amended to include "taking measures achieving an under-pressure in the can

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after closing, wherein the can is sufficiently full to avoid collapse at the under-pressure; and heat treating the filled and closed can, wherein the filled and closed can permits volumetric altering of the can internal volume to maintain a pressure in the filled and closed can to avoid rupture of the can during heat treating". The present amendment to claim 7 distinguishes over the prior art because the prior art does not teach or suggest the subject matter for the reasons as set forth above with regard to claim 1. As stated above it would be impermissible hindsight to equate the disclosure in Kamperman et al. with something inherently equivalent with the now claimed subject matter of claim 1. While the prior art may disclose pressure control and arguably rigid cans which may or may not experience volumetric changes the prior art taken as a whole does not teach one of ordinary skill in the art the specific method steps set forth in claim 7.

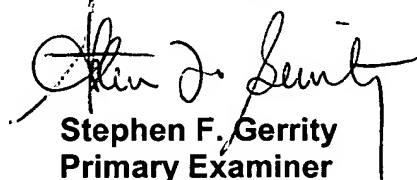
Any comments considered necessary by applicant must be submitted no later than the payment of the issue fee and, to avoid processing delays, should preferably accompany the issue fee. Such submissions should be clearly labeled "Comments on Statement of Reasons for Allowance."

5. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Stephen F. Gerrity whose telephone number is 571-272-4460. The examiner can normally be reached on Monday - Friday from 5:30 - 2:00.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Rinaldi Rada can be reached on 571-272-4467. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.



Stephen F. Gerrity
Primary Examiner
Art Unit 3721

13 November 2006

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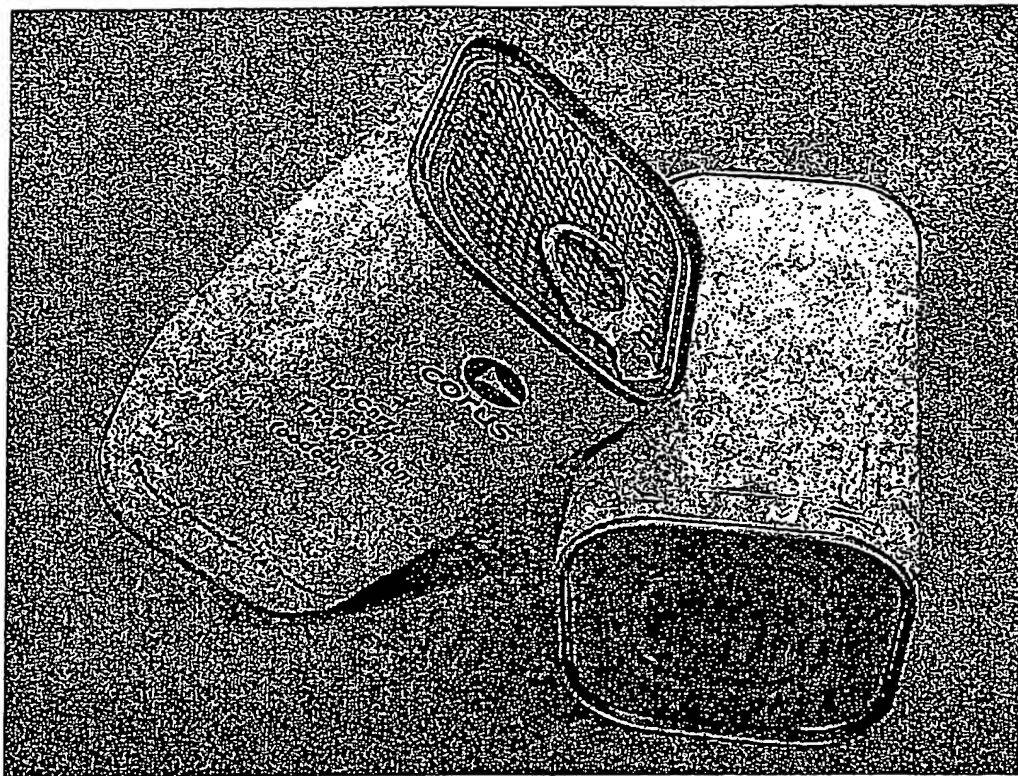


Fig. 2

PRIOR ART

Examiner's Amendment to Drawing
11/13/06
J